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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

VIA HAND-DELIVERY

Mr. William Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: *Further Notice of Proposed Rulemaking, Telephone Number
Portability, CC Docket No. 95-116*

Dear Mr. Caton:

Enclosed are an original and 13 copies of the Reply Comments of GST Telecom, Inc. in the above-captioned matter. Included is a copy to be date-stamped and returned by the courier. In addition, GST respectfully submits its Motion to Accept Late-Filed Pleading with its Reply Comments.

Thank you for your attention to this matter.

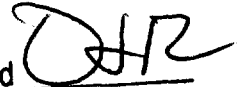
Sincerely,



Eric J. Branfman
Morton J. Posner

Counsel for GST Telecom, Inc.

Enclosures

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Telephone Number Portability)
)
)

CC Docket No. 95-116

MOTION TO ACCEPT LATE-FILED PLEADING

GST Telecom, Inc., ("GST") by its undersigned counsel, respectfully files this Motion seeking leave of the Federal Communications Commission ("Commission") to accept the attached late-filed Reply Comments of GST in the above-referenced proceeding.

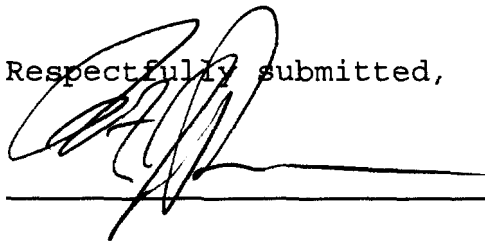
While GST made every effort to timely file the above-referenced Reply Comments, it was unable to do so prior to the end of the Commission's business day on September 16, 1996. However, GST is submitting its Reply Comments on the business day immediately following the filing deadline, and GST is simultaneously sending copies of its Reply Comments to all parties on the service list.

Acceptance of GST's Reply Comments is in the public interest because it provides additional information to the Commission regarding the impact of a competitively neutral cost recovery mechanism on competitive carriers. In addition, GST respectfully submits that the one-day delay in filing GST's Reply Comments will

not be prejudicial to any of the parties in this proceeding. The resulting delay in this instance is minimal, and will not result in harm or prejudice for any party in this proceeding.

For the foregoing reasons, GST respectfully requests that the Commission grant its Motion and allow GST's Reply Comments to be filed one business day late.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Eric J. Branfman', is written over a horizontal line.

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Counsel for GST Telecom, Inc.

Dated: September 17, 1996

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
)	

**REPLY COMMENTS OF
GST TELECOM, INC. ON COST RECOVERY OF
LOCAL TELEPHONE NUMBER PORTABILITY**

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Dated: September 17, 1996

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SUMMARY

GST Telecom, Inc. ("GST") strongly supports the Commission's intention to encourage the development of long-term number portability ("LNP") through federal guidelines on cost recovery and cost allocation. GST believes that the Commission's action in this proceeding is a significant step in developing a competitive market with increased choices for consumers. GST submits these reply comments in response to the proposals of several commenters that it feels will undermine the pro-competitive thrust of this proceeding.

GST concurs with the Commission's determination to ensure that its cost recovery rules are competitively neutral through the announcement of broad federal principles. The Commission's adoption of these principles will encourage efficient action by carriers, and ensure that LNP receives financial support from the entire industry. In contrast, the Commission should reject the proposals of commenters whose definitions of competitive neutrality allow costs to be passed through to competitors.

In order to implement a competitively neutral cost recovery mechanism for LNP, GST contends that only costs shared by all telecommunications carriers should be recoverable. Carriers will be free to engage in inefficient action if they are permitted to recover the costs of such behavior from competitors.

In terms of specific methods of recovery, GST believes that the Commission should adopt its proposed means of recovering the shared industry costs related to LNP. However, GST stresses that the standards of competitive neutrality should prohibit carriers from recovering costs by passing them along to competitors.

In addition, GST argues that the clear language of the Telecommunications Act of 1996 ("1996 Act") dictates that "all telecommunications carriers" bear the costs of number portability on a competitively neutral basis. The Commission does not possess the discretionary authority to exempt classes of carriers, although it may choose how those costs should be allocated among all carriers on a competitively neutral basis.

Finally, GST joins the majority of commenters in supporting the Commission's tentative conclusion that costs should be allocated on the basis of net revenues. Such a mechanism best approximates the measure of traffic for which each carrier is responsible and ensures that the costs of number portability are based on carrier earnings from sales to end users. Alternative allocation schemes force segments of the telecommunications industry to bear an excessive burden, and therefore these proposals do not meet the principles of competitive neutrality.

**Before the
Federal Communications Commission
Washington, D.C. 20054**

In the Matter of)	
)	
Telephone Number Portability)	CC Docket No. 95-116
)	
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**REPLY COMMENTS OF
GST TELECOM, INC. ON COST RECOVERY OF
LOCAL TELEPHONE NUMBER PORTABILITY**

GST Telecom, Inc. ("GST"), by its undersigned counsel and pursuant to Section 1.415 of the Commission's Rules, submits these reply comments in accordance with the Commission's Further Notice of Proposed Rulemaking in the above-captioned proceeding.¹ GST, a wholly-owned subsidiary of GST Telecommunications, Inc., was formed to develop, construct and operate alternate access and other telecommunications systems within the United States. Through its operating companies, GST has founded a successful operation of state-of-the-art fiber optic transmission networks in Riverside, San Bernadino, and Ontario, California. In addition, GST currently has "competitive access provider" ("CAP") networks under

¹ Telephone Number Portability, First Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 95-116, FCC 96-286 (rel. July 2, 1996) ("Further Notice").

construction or operational in Arizona, Hawaii, Idaho, New Mexico, and Washington. GST anticipates using these networks, together with the lease of unbundled facilities acquired from incumbent LECs and the resale of incumbent LECs' bundled service, to offer competitive local exchange service and exchange access in these and other western and southwestern states. To that end, GST is engaged in interconnection negotiations under Sections 251 and 252 of the Telecommunications Act of 1996 ("1996 Act") with U S West and GTE, and anticipates entering into such negotiations with Pacific Bell and Southwestern Bell.

As a competitive entrant in the southwestern and western United States, GST is vitally interested in the further development of competition in the telecommunications marketplace, and believes that LNP is an essential ingredient of any effort to promote competition. The implementation of LNP will provide consumers with increased opportunities for choice, thereby opening up opportunities for new entrants to compete with incumbents on the merits of their services and rates. Thus, GST supports the Commission's efforts in this proceeding, and submits these reply comments in order to raise what it views as important issues to be considered as the Commission takes important steps in the development of competition.

I. THE COMMISSION HAS CORRECTLY DEFINED THE PRINCIPLES TO ENSURE COMPETITIVE NEUTRALITY (§210)

GST joins a significant majority of initial commenters in concurring with the Commission's intention to administer LNP cost recovery mechanism on the basis of two principles: "(1) a competitively neutral cost recovery mechanism should not give one service provider an appreciable, incremental cost advantage over another service provider, when competing for a specific subscriber; and 2) a competitively neutral cost recovery mechanism should not have a disparate effect on the ability of competing service providers to earn a normal return."² Both principles will help the Commission ensure that the application of its cost recovery mechanism is efficient and equitable. The first principle, for example, guarantees that market-based factors -- not regulatory standards -- will govern a carrier's ability to compete for customers. The second principle serves a similar purpose by

² See Comments of Association for Local Telecommunications Services, at 3; Comments of People of the State of California and Public Utilities Commission of California, at 4; Comments of Personal Communications Industry Association, at 4-5; Comments of Public Utilities Commission of Ohio, at 5; Comments of Sprint, at 4; Comments of MCI, at 2; Comments of Illinois Commerce Commission, at 4; Joint Comments of Colorado Public Utilities Commission Staff and Colorado Office of Consumer Counsel, at 5-6; Comments of Ameritech, at 4; Comments of Time Warner Communications Holdings, Inc., at 6; Comments of Florida Public Service Commission, at 2; Comments of Teleport Communications Group Inc., at 3.

providing that each carrier will be allowed to compete on the basis of its own ability to use the optimal technology and keep costs low, rather than having to bear the costs of other carriers' inefficiencies through regulatory mandate.

In its initial comments, BellSouth voiced the strongest opposition to the proposed definitions, claiming that they are insufficient safeguards against the danger of end users switching service providers on the basis of regulatory standards. Specifically, BellSouth emphasized that wireline and wireless carriers may participate in LNP on a staggered basis, meaning that costs would have a greater immediate impact on incumbent LECs. BellSouth urged the Commission to adopt alternative principles that account for this staggered entrance and to "ensure that artificial, regulatory incentives or disincentives are not created with respect to end users changing service providers."³

GST believes that no party would disagree with BellSouth in that regulatory standards should not favor one type of carrier over another, or affect the ability of carriers to compete in the telecommunications marketplace. However, GST submits that BellSouth's concerns are already addressed appropriately by the

³ Comments of BellSouth, at 4.

Commission's proposed principles, and adoption of BellSouth's proposed alternatives would be a case of overenforcement. If the Commission should follow BellSouth's advice and adopt more stringent principles that affect the ability of end users to switch providers, it may in fact protect the status of incumbents and limit the ability of end users to switch providers on the basis of cost or other market-based factors. A competitive new entrant that can implement number portability more efficiently and at lower cost should be free to attract subscribers from the incumbent. The Commission's competitive neutrality principles serve an appropriate purpose as proposed: they offer incentives for technological innovation and efficient competition, but also guard against the possibility that regulatory standards could create artificial incentives for end users to switch providers.

II. PERMITTING RECOVERY OF CARRIER-SPECIFIC COSTS IS INEFFICIENT AND WILL HINDER THE IMPLEMENTATION OF LONG-TERM NUMBER PORTABILITY (§§ 221-225)

GST submits that in order to implement a competitively neutral cost recovery mechanism, the Commission should only permit recovery of the implementation costs shared by all carriers. To allow recovery of carrier-specific costs, as the Commission has proposed, will allow a single carrier to pass the costs of its LNP

implementation strategy -- no matter how ineffective or technologically unsound -- to its competitors. As WinStar and MFS noted in initial comments, recovery of carrier-specific costs does not require carriers to internalize the costs of inefficient behavior, thereby undermining the effective implementation of number portability.⁴ Under a competitively neutral rule, competitors should not be left to shoulder the burdens of covering these extra costs. Shared industry costs do not create the same perverse incentives as carrier-specific costs, and in fact must be recoverable if the Commission wishes to encourage carriers to participate in the implementation of LNP. But recovery of either direct or indirect carrier-specific costs will create similar inefficiencies and disincentives in the marketplace, and also retard the implementation of LNP.

A few commenters express agreement with the tentative conclusion that direct carrier-specific costs should be recoverable. For example, some assert that the costs of LNP are too costly to make carriers bear individually,⁵ while others actually suggest that forcing carriers to bear direct carrier-specific costs would rise to the level of an unconstitutional

⁴ Comments of WinStar, at 7; Comments of MFS, at 2.

⁵ Comments of Bell South, at 6.

taking.⁶ However, the fact that the mandate of number portability may require carriers to make more than simple upgrades should not mean that carriers be permitted to recover these additional costs, nor does the rational enforcement of a federal mandate constitute an unconstitutional taking. While costliness is certainly a central concern of any regulatory structure, the Commission should not excuse compliance with a federal mandate simply because the costs of the mandate may be higher than the regulated entity would wish. MFS highlighted this point plainly and effectively in its initial comments, noting that the auto industry did not implement a mechanism for the sharing of individual assembly line adjustment costs among competitors when each was required to include air bags in newly manufactured cars.⁷ The Commission must not allow carriers to pass the costs of adjustments to their own operations along to competitors, particularly when those adjustments cannot be monitored by independent third parties.

⁶ Comments of GTE, at 6; Comments of Cincinnati Bell, at 6.

⁷ Comments of MFS, at 4.

III. THE COMMISSION SHOULD ADOPT ITS PROPOSED MEANS OF RECOVERING SHARED INDUSTRY COSTS (§§ 216-221)

GST supports the Commission's division of shared industry costs into three categories: 1) non-recurring costs; 2) recurring costs; and 3) costs for interaction with the number portability database. GST believes the optimal and most competitively neutral means of recovering all three types of shared industry costs is through monthly charges to all carriers on the basis of net revenues. This proposal also confirms that the benefits in terms of increased competition that LNP offers to the telecommunications marketplace are reflected in the Commission's cost recovery rules.

In terms of carrier-specific costs, GST reemphasizes that neither direct nor indirect carrier-specific costs should be recoverable, and therefore GST believes that the Commission discussion of how to recover direct carrier-specific costs is moot. However, should the Commission decide to permit the recovery of direct carrier-specific costs, GST alternatively argues that it should not mandate a single method of recovering such costs. While US West suggests that the Commission should require direct carrier-specific costs be recovered through a surcharge to all end-users -- including resellers --⁸ GST argues that this proposal clearly

⁸ Comments of US West, at 14.

violates the principles of competitive neutrality. As discussed previously, permitting carriers to pass costs along to competitors by such means encourages carriers to ignore the efficiency of their actions and also the effect of their actions upon LNP implementation.

Thus, while carriers should have flexibility in deciding whether to absorb the costs or pass them along through a consumer surcharge, the Commission should prohibit carriers from recovering costs by passing them on to competitors. As WinStar argued in its initial comments, carriers must not be allowed to undermine the Commission's goal and Congress' mandate of competitive neutrality by transferring costs through any form of carrier-to-carrier payments.⁹ If the Commission is going to permit recovery of direct carrier-specific costs (and GST continues to urge the Commission against such a course of action), the Commission should also take this opportunity to promulgate additional safeguards against anti-competitive transfers and ensure that carriers are not disadvantaged by their competitors' response to number portability.

⁹ Comments of WinStar, at 8.

IV. ACCORDING TO THE 1996 ACT, ALL CARRIERS SHOULD BEAR THE COSTS OF NUMBER PORTABILITY (§ 209)

GST agrees with a large and diverse group of initial commenters that section 251(e)(2) of the 1996 Act requires all telecommunications carriers to assume some level of responsibility for the costs of LNP.¹⁰ According to this provision, the burdens of number portability "shall be borne by all telecommunications carriers on a competitively neutral basis as determined by the Commission."¹¹ As will be discussed in more depth below, the Commission is only given the authority to allocate costs among carriers through this provision -- the Commission does not have authority under the 1996 Act to exempt carriers for any reason from providing at least some financial support for the implementation of LNP.

The Commission should therefore reject the proposals made by some commenters to exempt certain carriers from responsibility for LNP. For example, the Telecommunications Resellers Association contended that the Commission should exempt "carriers that do not offer local service and hence will not be the recipients of

¹⁰ Comments of Bell Atlantic, at 1; Comments of MFS, at 6; Comments of Public Utilities Commission of Ohio, at 4; Comments of WinStar, at 3; Comments of Omnipoint, at 3; Comments of Ameritech, at 1; Comments of SBC Communications, Inc., at 5-6; Comments of NYNEX, at 5.

¹¹ 47 U.S.C. § 251(e)(2) (1996) (*emphasis added*).

'ported' numbers."¹² Along the same lines, a few commenters urged the Commission to adopt a per-query cost allocation mechanism, and concluded that "only carriers utilizing the database for their numbers should be responsible for payment of the charges."¹³ Others echoed these exemption pleas, claiming that competitive neutrality permits the Commission to exclude particular types of carriers from shouldering certain costs for the implementation of LNP.¹⁴

GST contends that such exemption claims contravene the plain language of the 1996 Act, and ignore the fact that the entire telecommunications industry benefits from the competitive improvements that LNP introduces to the marketplace. Thus, while the Commission can exercise its discretion by allocating the costs of LNP among all carriers according to its conception of competitive neutrality, the Commission must not permit any group of carriers to avoid their obligation to offer some level of financial support for the implementation of LNP.

¹² Comments of Telecommunications Resellers Association, at 5.

¹³ Joint Comments of Colorado Public Utilities Commission Staff and Colorado Office of Consumer Counsel, at 6-7; Comments of Scherers Communications Group, Inc., at 3.

¹⁴ Comments of NTCA and OPASTCO, at 8; Comments of PCIA, at 4; Comments of California Public Utility Commission, at 5.

V. THE PROPOSED NET REVENUE ALLOCATION MECHANISM IS THE OPTIMAL MEANS OF COST ALLOCATION AND SHOULD BE ADOPTED BY THE COMMISSION (§ 213)

Finally, GST joins a number of commenters in supporting the Commission's proposal to allocate LNP implementation costs in proportion to net revenues.¹⁵ A calculation mechanism based on net revenues is competitively neutral because it incorporates earnings from sales to end users, rather than transfers between competitors. Under a net revenue mechanism, it will be more difficult for carriers to pass along the costs of any inefficient behavior to competitors. Moreover, through the adoption of such a cost allocation mechanism, the Commission can ensure that each carrier is responsible for costs only in relation to its level of traffic.

Several commenters offered alternative proposals that fail to satisfy the principles of competitive neutrality. Some urged the Commission to adopt cost allocation mechanisms based upon a per-query basis,¹⁶ on the basis of a carrier's active lines,¹⁷ or by the

¹⁵ Comments of Nextel, at 3; Comments of WinStar, at 5; Comments of MFS, at 6; Comments of Frontier, at 4; Comments of Teleport Communications Group, at 4.

¹⁶ Comments of Omnipoint Communications, Inc., at 3; Comments of Scherers Communications Group, Inc., at 2-3.

¹⁷ Comments of SBC Communications, Inc., at 7; Comments of Public Utilities Commission of Ohio, at 6.

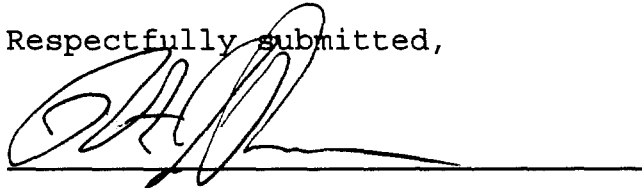
number of telephone numbers maintained by a carrier.¹⁸ None of these proposals, however, meets the required standards of competitive neutrality. These proposals directly contradict the requirement in the 1996 Act that all carriers bear some responsibility for LNP implementation, and instead serve as subtle mechanisms to exempt many carriers from any responsibility for the implementation of LNP. They also disregard the obvious benefits that all carriers -- not just those that directly utilize the number portability database -- derive from the presence of number portability in the telecommunications marketplace. Because it offers the most equitable allocation mechanism and recognizes the comprehensive market-wide benefits of number portability, GST urges the Commission to adopt its proposal to allocate responsibility for LNP implementation on the basis of net revenues.

¹⁸ Comments of MCI, at 7; Comments of GSA, at 6.

CONCLUSION

For the foregoing reasons, GST respectfully requests that the Commission adopt rules consistent with principles discussed herein.

Respectfully submitted,



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Dated: September 17, 1996

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of September, 1996, copies of Reply Comments of GST Telecom, Inc., in Docket No. 95-116, were served via Hand Delivery* or First Class Mail, U.S. postage prepaid, to all parties on the attached service list.


Wendy D. Mills

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